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2 County of San Diego
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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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11 JIM MAXWELL and KAY MAXWELL,) No. 07-cv-2385-JAH(WMc)
12 individually and as guardians of TREVER)
13 ALLEN BRUCE and KELTEN TANNER)
14 BRUCE; and JIM MAXWELL, as)
15 executor of the ESTATE OF KRISTIN)
16 MARIE MAXWELL-BRUCE,)
17 Plaintiffs,)
18 v.)
19 COUNTY OF SAN DIEGO; ALPINE)
20 FIRE PROTECTION DISTRICT;)
VIEJAS FIRE DEPARTMENT; DEPUTY)
LOWELL BRYAN "SAM" BRUCE;)
Does 1-50,)
Defendants.)

NOTICE OF MOTION AND MOTION TO
DISMISS THE FIRST, SECOND, THIRD
AND FOURTH CAUSES OF ACTION OF
PLAINTIFFS' COMPLAINT AND
CERTAIN CLAIMS IN THE EIGHTH
AND NINTH CAUSES OF ACTION,
AND FOR A MORE DEFINITE
STATEMENT AS TO OTHER CLAIMS
IN THE EIGHTH AND NINTH CAUSES
OF ACTION
[Fed.R.Civ.P., rule 12(b)(6), 12(e), 8(a)]
Date: February 19, 2008
Time: 2:30 p.m.
Dept.: Courtroom of the
Honorable John A. Houston
Trial Date: None

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22 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on February 19, 2008, at 2:30 p.m., or as soon
24 thereafter as the matter may be heard, in the courtroom of the Honorable John A.
25 Houston, United States District Judge, located at 940 Front Street, San Diego, California,
26 defendant County of San Diego will move to dismiss the first, second, third and fourth
27 causes of action of plaintiffs' complaint and certain claims in the eighth and ninth causes
28 of action on grounds that they fail to state a claim against the moving defendant upon

1 which relief can be granted pursuant to Federal Rules of Civil Procedure, rule 12(b)(6),
2 and for a more definite statement as to other claims against the moving defendants in the
3 eighth and ninth causes of action, pursuant to Federal Rules of Civil Procedure, rules
4 12(e) and 8(a). As to claims and causes of action premised on County liability for the
5 suffering and death of Kristin Marie Maxwell-Bruce, dismissal is sought with prejudice
6 and without leave to amend.

7 The motion will be based upon this notice, upon the accompanying memorandum
8 of points and authorities, upon the notice of lodgment combined with request for judicial
9 notice and Exhibit "A" attached thereto, and upon all papers and pleadings on file in this
10 action.

11 DATED: January 10, 2008 JOHN J. SANSONE, County Counsel

12 By: s/ MORRIS G. HILL, Senior Deputy
13 Attorneys for Defendant County of San Diego
E-mail: morris.hill@sdcounty.ca.gov

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Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On January 10, 2008, I served the following documents: **Notice Of Motion And Motion To Dismiss The First, Second, Third And Fourth Causes Of Action Of Plaintiffs' Complaint And Certain Claims In The Eighth And Ninth Causes Of Action, And For A More Definite Statement As To Other Claims In The Eighth And Ninth Causes Of Action; Memorandum Of Points And Authorities In Support Of Motion To Dismiss First, Second, Third And Fourth Causes Of Action Of Plaintiffs' Complaint And Certain Claims In The Eighth And Ninth Causes Of Action, And For A More Definite Statement As To Other Claims In The Eighth And Ninth Causes Of Action; Notice Of Lodgment Combined With Request For Judicial Notice** in the following manner:

- By personally delivering copies to the person served.
- By placing a copy in a separate envelope, with postage fully prepaid, for each addressee named below and depositing each in the U. S. Mail at San Diego, California.
- By electronic filing, I served each of the above referenced documents by E-filing, in accordance with the rules governing the electronic filing of documents in the United States District Court for the Southern District of California, as to the following parties:

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 10, 2008, at San Diego, California.

By: s/ MORRIS G. HILL
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